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RECENT LEGAL LITERATURE

HINTS FOR FORENSIC PRACTICE. A Monograph on Certain Rules appertaining to the Subject of Judicial Proof. By Theodore F. C. Demarest, A.B., A.M., L.L.B., New York: The Banks Law Publishing Company, 1905, pp. x, 123.

The author of this little monograph has very successfully attempted an exposition of the legal principles underlying the decisions of the courts upon the use of the objections to evidence as "incompetent, irrelevant and immaterial," and of those principles which should control in determining whether evidence once received shall be considered though not objected to when received.

The frequent use of the objection that evidence is "incompetent, irrelevant and immaterial," or that it is subject to one or more of these objections, has not escaped the attention of any one with much experience in the trial court. And yet there have been few indeed who have had any very definite idea of what the objection really was in legal effect.

The author has certainly accomplished a real service in pointing out quite clearly that the objection "incompetent," upon both principle and authority, means nothing more than would be meant by a general objection that the evidence is inadmissible; and in showing just what is the legal signification and effect of an objection to evidence as "irrelevant" or as "immaterial," and that the use of both is tautology.

He is not less helpful in his discussion of the position of that party to litigation who has permitted the reception of evidence without objection, when it was apparent at the time it was offered that it was subject to objection. The author's caustic comment upon the attempt to distinguish between a motion to strike out and one for instruction to disregard is well deserved.

The book can be read at a single sitting, and while printed in large type on good paper and being well bound in cloth it is inexpensive, and the trial lawyer can ill afford to pass it by without reading.

V. H. LANE.

AN ESSAY ON THE PRINCIPLES OF CIRCUMSTANTIAL EVIDENCE, Illustrated by Numerous Cases. By William Wills, Esq., Fifth Edition by Sir Alfred Wills, Knt. Wills' American Notes, by George E. Beers and Arthur L. Corbin, of the Faculty of the Yale Law School, Boston: The Boston Book Company, 1905, pp. xiii, 448.

The first edition of this work was published in England in 1838, and its value is attested in the demand which brought out the fifth English edition in 1902, which was put out under the editorship of Sir Alfred Wills, Knt., one of England's judges of the High Court of Justice and son of William Wills, Esq., the author. The present American edition is the first authorized edition published in this country, though Judge Wills makes some very caustic comments in the preface to the last English edition in criticism of

the wholesale appropriation by one Arthur P. Will of the matter of the edition of 1862 for a *Treatise on the Law of Circumstantial Evidence*, published in Philadelphia in 1896. This appropriation furnishes an occasion for some rather severe criticism of our copyright laws which make possible such depredation.

The present edition is a reprint of the text of the last English edition with American notes by Professors Beers and Corbin.

The text is limited in its discussion to circumstantial evidence as applicable to issues in criminal cases, and the plan of treatment is to present a statement of the rules controlling some special phase of circumstantial evidence, developed through a brief discussion of the particular matter, and to illustrate with typical cases.

This treatment of a particular phase is followed immediately with the "American Notes." Their chapters deal with other divisions of the subject and are likewise followed by the discussion of the American editors.

In the wealth of new material at the lawyer's hand in this general field of the law of evidence this little book is not to be overlooked, particularly by those interested in the administration of the criminal law.

The work is scholarly and the selection of cases most excellent. Mr. Beers through his special work in the field of evidence is well qualified for its editorship, and the profession will find the book what it purports to be—a convenient and accurate exposition upon principle and authority of this interesting branch of the law.

V. H. LANE.

PROCEDURE; ITS THEORY AND PRACTICE. By William T. Hughes, LL.B., author of *Technology of Law* and of the *Law of Contracts*, Chicago: Callaghan & Co., 1905. Two volumes, pp. x, 1289.

A work like this one, evidently undertaken and written with a conscientious ambition to classify and co-ordinate the myriad phases of modern law, and unquestionably showing a vast amount of labor and research, should not be carelessly criticised by a hasty reviewer. The author, in his preface, appeals to the obvious difficulties met with in its preparation, as considerations sufficient to protect it against a hurried and harsh criticism. A reviewer can seldom do an author full justice. But since reviews must be written, the writers of them may at least try to bear in mind that it is easier to find defects in a book than to write a better one.

However, after every allowance is made, this treatise, we are obliged to confess, is somewhat puzzling. It is built upon the very excellent basic theorem, that, inasmuch as procedure runs through all the substantive branches, it may be considered the unifying principle upon which a well co-ordinated system of law can be constructed. This, it seems to us, is sound doctrine. Procedure is thoroughly fundamental. About it as an axis, the substantive titles revolve. Ignorance of procedure is ignorance of the law. No man can be a sound and safe lawyer who has not made procedure the touchstone of his legal studies.

To reconstruct the body of the law upon this principle seems to us a most